

# employment REPORT

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## New ADA Amendment Expands Coverage of Law

### Significant Changes Will Require Employers to Revise Disability Policies

Congress recently approved a bill that would expand workplace protections for Americans with disabilities. President Bush signed the bill into law on September 25, 2008, and it is scheduled to become effective on January 1, 2009.

Congress passed the new measure, the ADA Amendment Act of 2008, in response to several judicial rulings that narrowed the broad scope and protections of the Americans with Disabilities Act ("ADA"). The ADA became law in the early 1990s, and requires employers to make accommodations for disabled employees.

While the law applies to individuals who have disabilities that "substantially limit major life activities," the ADA never specifically defined "major life activity". As such, the federal courts began to define the term in ways that restricted the number of disabled workers covered under the Act. The new measure expressly overrules holdings by the U.S. Supreme Court in two major ADA cases: *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), which directs courts to consider "mitigating measures" such as medication when determining whether an individual is disabled, and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), which requires a narrow interpretation of the ADA's definition of a disability.

In *Williams*, the Supreme Court limited the meaning of "disabled" by holding that to be disabled in a major life activity, an individual must be impaired in the performance of activities of "central importance to daily life" and the disability must be "permanent or long term." Pursuant to the new law, the ADA would continue to apply to individuals who have disabilities that "substantially limit" major life activities, but the new law redefines that phrase to mean "materially restricts" major life activities.

According to the legislative history of the new law, the "materially restricts" language is "intended to be a less stringent standard to meet" than that propounded in *Williams*.

Therefore, the definition of major life activities will now include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." Major life activities are also expanded to include "major bodily functions," including but not limited to "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."

Further, in deciding whether a person is disabled, the new law says courts should not consider the effects of "mitigating measures" like prescription drugs, hearing aids and artificial limbs. This was done in response to court deci-




sions holding that people with conditions such as epilepsy, diabetes, mental illness, cancer and even multiple sclerosis were not protected by the ADA because their conditions could be treated with medication.

Moreover, the new law provides, "an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."

These changes overturn the Supreme Court's decision in Sutton.

While the changes enacted expand the scope of individuals covered by the ADA, they do not limit employers' ability to raise defenses, including defenses as to whether a requested accommodation is reasonable. Because of the expanded scope of coverage, however, the new law may result in the defense of ADA cases becoming more difficult and expensive.

Employers will soon need to address increased workplace accommodation rights and employment policies to ensure that they are fully compliant with the new law. Employers should consider reviewing company handbooks and policies and training their human resource personnel regarding the new disability standards. 

*If you have any questions, please contact any member of our Employment Practice.*

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